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It Doesn't Take a Village, But it Does Take a Super-Majority To Pass a Bill by Roll Call Vote in the Senate (in the 109th Congress)

On February 6 on the floor of the U.S. Senate, Majority Leader Reid asserted: "The vast majority of legislation that passes here is with a simple majority."

That is demonstrably false. In fact, during the 109th Congress, of all the measures that underwent roll call votes, only one was allowed to pass by a simple majority vote – not counting a handful more that were procedurally protected from filibuster (when not protected, 60 aye votes are required to end a filibuster).

What was the *one and only bill* that the Democrat minority *allowed to pass* without a super-majority vote? It was the extension of the debt limit (H.J.Res. 47) – a "must pass" bill if there ever was one!

Here's a walkthrough of the measures that underwent roll call votes during the 109th Congress (2005 and 2006, when Senator Reid's party was in the minority):

In 2005, a total of 40 measures (not including nominations) underwent roll call votes.
In 2006, a total of 38 measures (not including nominations) underwent roll call votes.
(For simplicity's sake, we count a bill only once; that is we do not double-count the measure if it underwent a roll call vote both for final passage and for its conference report. Nor, of course, do we count individual amendments to the measures. See attached addendum for details.)

That's a total of 78 pieces of legislation. Of those, the number of measures that passed by a margin of less than 60 votes amounts to 6. So, 6 out of 78 measures passed by a simple majority versus a super-majority (60 or more aye votes). But, that ratio is not the operative ratio.

That is because *all but one* of those measures that passed by a simple majority was *not even subject to a filibuster*. That is, 5 of the 6 measures were protected from the 60-vote hurdle by rule or law (as we detail below). Restated, that means that Democrats could not have demanded a super-majority for passage of those 5 bills.

These are the 6 measures from the 109th Congress that passed with less than a super-majority vote – and the reason 5 of them didn't require 60 votes:

Total of the 2005 Measures Passed by Roll Call Vote That Received Fewer Than 60 Votes:

- 1) Vote No. 19: disapproving the Canadian beef rule. S.J.Res. 4 passed, 52-46. (The bill was considered under the Congressional Review Act, which effectively prohibits a filibuster.)
- 2) Vote No. 81: Budget Resolution, S. Con. Res. 18, passed 51-49. (The Budget Resolution is protected from filibuster by the Congressional Budget Act.)
- 3) Vote No. 170: CAFTA, S. 1307, passed 54-45. (This FTA was protected against filibuster by the so-called “Fast Track trade authority.”) [Note: Senate again passed same language in Vote No. 209, H.R. 3045, passed 55-45.]
- 4) Vote No. 303: Omnibus Reconciliation, S. 1932, passed 52-47. (The Budget Act protects a reconciliation bill from the 60-vote hurdle.)

Total of the 2006 Measures Passed by Roll Call Vote That Received Fewer Than 60 Votes:

- 5) Vote No. 74: Budget Resolution, S. Con. Res. 83, passed 51-49. (As noted above, the Budget Resolution is protected against a 60-vote threshold.)
- 6) Vote No. 54: extension of the debt limit, H.J.Res. 47, passed 52-48. (No protection against filibuster for this bill.)

Clearly, 60 votes is the norm – not the exception – for bills that undergo roll call votes. We recognize that many of these votes did not *require* 60 votes – for example, cloture was not filed in all cases. In fact, many of the bills passed with few if any nay votes. But, the bottom line is this: 60 votes is the norm. At least, that was the case in the 109th Congress when the Democrats were the minority.

Disposition of Measures Undergoing Roll Call Votes in the Senate, 109th Congress

109th Congress, 1st Session (2005)

Number of measures on which there were roll call votes in 2005: 40

Passed without a vote on cloture or another 60-vote requirement: 29

- 1) London Terrorist Attacks (S. Res. 193; passed 76-0)
- 2) Homeland Security Appropriations (H.R. 2360; 96-1)
- 3) Burma Sanctions Extension (H.J. Res. 52; 97-1)
- 4) Americans With Disabilities Act Commemoration (S. Res. 207; 87-0)
- 5) CAFTA (S. 1307: **54-45**; H.R. 3045: 55-45)
- 6) Budget Resolution (S.Con. Res. 18: passed **51-49**; Conference Report, H. Con. Res. 95: passed 52-47)
- 7) Legislative Branch Appropriations (H.R. 2985 Conference Report; 96-4)
- 8) Hurricane Katrina Resolution (S. Res. 233; 94-0)
- 9) Katrina Emergency Supplemental (H.R. 3673; 97-0)
- 10) Commerce-Justice-State Appropriations (H.R. 2862; bill passed 91-4; Conference Report passed 94-5)
- 11) Agriculture Appropriations (H.R. 2744; bill passed 97-2, Conference Report passed 81-18)
- 12) Military Construction Appropriations (H.R. 2528; 98-0)
- 13) Customs Treaty (Treaty Doc. 108-6; 87-0)
- 14) Transportation-Treasury-HUD Appropriations (H.R. 3058; 93-1)
- 15) Foreign Operations Appropriations (H.R. 3057; bill passed 98-1; Conference Report passed 91-0)
- 16) Energy and Water Appropriations (H.R. 2419; bill passed 92-3; Conference Report passed 84-4)
- 17) Pension Reform (S. 1783; 97-2)
- 18) Tax Relief Act (S. 2020; 64-33)
- 19) Iraqi Election (S. Res. 38; passed 93-0)
- 20) Class Action Reform (S. 5; 72-26)
- 21) Genetic Nondiscrimination (S. 306; 98-0)
- 22) Disapproval of Canadian Beef Rule (S.J. Res. 4; **52-46**)
- 23) Vocational Education Reauthorization (S. 250; 99-0)
- 24) Mourning the Death of Pope John Paul II (S. Res. 95; 98-0)
- 25) Airbus Subsidies Resolutions (S.Con. Res. 25; 96-0)
- 26) Interior Appropriations (H.R. 2361; 94-0)
- 27) Continuing Resolution (H.J. Res. 68; passed by voice vote after a vote on an amendment)
- 28) 2nd Continuing Resolution (H.J. Res 72; passed by voice vote after a vote on an amendment)
- 29) Deficit Reduction Omnibus Reconciliation (S. 1932; bill passed **52-47**; the Conference Report passed 50-50 with Vice President Cheney voting aye)

Passed after a cloture vote and/or other 60-vote requirement: 7

- 1) Firearm Liability Reform (S. 397; cloture on the motion to proceed invoked 66-32; bill passed 65-31)
- 2) Defense Appropriations (H.R. 2863; cloture invoked 94-4; bill passed 97-0; cloture on the Conference Report failed 56-44; after ANWR provisions removed, Conference Report passed 93-0)
- 3) Labor-HHS Appropriations (H.R. 3010; cloture invoked 97-0; bill passed 94-3)

- 4) Bankruptcy Reform (cloture invoked 69-31; bill passed 74-25)
- 5) Highway Bill (H.R. 3; cloture on the motion to proceed invoked 94-6; cloture on the Inhofe substitute invoked 92-7; motion to waive the Budget Act on the Inhofe substitute agreed to 76-22; bill passed 89-11; Conference Report passed 91-4)
- 6) Emergency Supplemental (H.R. 1268; cloture invoked 100-0; bill passed 99-0; Conference Report passed 100-0)
- 7) Energy Bill (H.R. 6; cloture invoked 92-4; bill passed 85-12; motion to waive the Budget Act for consideration of the Conference Report agreed to 71-29; Conference Report passed 74-26)

Passed after failure of cloture: 1

- 1) Defense Authorization (S. 1042; cloture failed 50-48 on July 26; the bill later passed 98-0 November 15)

Defeated by cloture: 1

- 1) Patriot Act Conference Report (H.R. 3199; cloture failed 52-47; the bill was passed in 2006)

Defeated on an up-down vote: 1

- 1) Mercury Regulation Resolution of Disapproval (47-51)

Amendments voted on but no final action taken on the bill: 1

- 1) Foreign Affairs Authorization (S. 600)

109th Congress, 2nd Session (2006)

Number of measures on which there were roll call votes in 2006: 38

Passed without a vote on cloture or another 60-vote requirement: 16

- 1) Tax Hike Prevention (H.R. 4297; bill passed 66-31; Conference Report passed 54-44)
- 2) Patriot Act Short-Term Extension (H.R. 4659; 95-1)
- 3) Debt Limit (H.J. Res. 47; **52-48**)
- 4) US-Oman FTA (S. 3569; 60-34; H.R. 5684; 62-32)
- 5) Homeland Security Appropriations (H.R. 5441; 100-0)
- 6) Human Fetus Farming Prohibition (S. 3504; 100-0)
- 7) Nondestructive Stem Cell Research (S. 2754; 100-0)
- 8) Stem Cell Research (H.R. 810; 63-37)
- 9) Water Resources (H.R. 5117; passed by voice vote after votes on amendments)
- 10) Voting Rights Act (H.R. 9; 98-0)
- 11) Pension Reform (H.R. 4; 93-5)
- 12) Defense Appropriations (H.R. 5631; bill passed 98-0; Conference Report passed 98-0)
- 13) Budget Resolution (S. Con. Res. 83, **51-49**)
- 14) Interrogation and Trial of Terrorists (S. 3930; 65-34)
- 15) India Nuclear Energy (S. 3709; 85-12)
- 16) Military Construction (H.R. 5385; passed by voice vote after a vote on a motion to request the attendance of absent Senators)

Passed after a cloture vote and/or other 60-vote requirement: 10

- 1) Patriot Act Additional Amendments (S. 2271; cloture on the motion to proceed invoked 96-3; cloture on the bill invoked 69-30; bill passed 95-4)
- 2) Patriot Act Conference Report (H.R. 3199; cloture invoked 84-15; bill passed 89-10)

- 3) LIHEAP Aid (S. 2320; motion to waive the Budget Act agreed to 66-31; cloture invoked 75-25; bill passed by voice)
- 4) Lobbying Reform (S. 2349; cloture was first rejected 51-47 due to a Dubai port amendment, after that issue was resolved, cloture was invoked 81-16 and the bill passed 90-8)
- 5) Emergency supplemental (H.R. 4939; cloture invoked 92-4; bill passed 77-21)
- 6) Illegal and Legal Immigration (S. 2611; cloture invoked 73-25; bill passed 62-36)
- 7) Defense Authorization (S. 2766; cloture invoked 98-1; bill passed 96-0)
- 8) Gulf of Mexico OCS (S. 3711; cloture on the motion to proceed invoked 86-12; cloture on the bill invoked 72-23; bill passed 71-25)
- 9) Port Security (H.R. 4954; cloture invoked 98-0; bill passed 98-0)
- 10) Secure Fence Act (H.R. 6061; cloture on the motion to proceed invoked 94-0; cloture on the bill invoked 71-28; bill passed 80-19)

Defeated by cloture or other 60-vote requirement: 10

- 1) Asbestos compensation (S. 852; cloture on the motion to proceed invoked 98-1; motion to waive the Budget Act failed 58-41)
- 2) Illegal Immigration (S. 2454; cloture on the substitute amendment failed 39-60; cloture on the motion to commit failed 38-60; cloture on the bill failed 36-62)
- 3) Medical Care Access (S. 22; cloture on the motion to proceed failed, 48-42)
- 4) Mothers & Babies Medical Care (S. 23; cloture on the motion to proceed failed, 49-44)
- 5) Small Business Health Insurance (S. 1955; cloture on the motion to proceed invoked, 96-2; cloture on the bill failed, 55-43)
- 6) Marriage Constitutional Amendment (S.J. Res. 1; cloture on the motion to proceed failed, 49-48)
- 7) Death Tax Repeal (H.R. 8; cloture on the motion to proceed failed, 57-41)
- 8) Race Government for Native Hawaiians (S. 147; cloture on the motion to proceed failed, 56-41)
- 9) Death Tax/Minimum Wage/Extenders (H.R. 5970; cloture on the motion to proceed failed, 56-42)
- 10) Child Custody Protection Act (S. 403; bill passed 65-34; cloture on the motion to concur with the House amendment to the bill failed 57-42; bill died)

Defeated on an up-down vote: 1

- 1) Flag Protection Constitutional Amendment (S.J. Res. 12; defeated 66-34; 2/3rds present and voting required)

Amendments voted on and no final action taken on the bill: 1

- 1) Agriculture Appropriations (H.R. 5384)